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February 6, 2002

Honorable John L. Burton
205 State Capitol

TALENT AGENCIES - #2527

Dear Senator Burton:

You have asked whether the Labor Commissioner has the authority to provide to talent agencies a blanket waiver of either the provisions of Section 1700.30 of the Labor Code,¹ regulating the sale, transfer, or gift of any interest in or the right to participate in the profits of a talent agency, or the provisions of Section 1700.39, regulating the dividing of fees by a talent agency.

Chapter 4 (commencing with Section 1700) of Part 6 of Division 2 (hereafter Chapter 4) generally regulates talent agencies, providing that “[n]o person shall engage in or carry on the occupation of a talent agency without first procuring a license therefor from the Labor Commissioner” (Sec. 1700.5). A “talent agency” is “a person or corporation who engages in the occupation of procuring, offering, promising, or attempting to procure employment or engagements for an artist or artists” (subd. (a), Sec. 1700.4). The term “artist,” in turn, includes a broad spectrum of persons working in the entertainment field (see subd. (b), Sec. 1700.4).

Chapter 4 governs the licensing of talent agencies, specifies requirements for the operation and management of talent agencies, and specifies the authority of the Labor Commissioner in this regard. Section 1700.29 authorizes the Labor Commissioner to adopt rules and regulations as are reasonably necessary for the purpose of enforcing and administering Chapter 4.

¹ All subsequent section references are to the Labor Code, unless indicated otherwise.

The Labor Commissioner has broad authority to administer the provisions of Chapter 4 and to hear and determine disputes arising under it (see, for example, *Styne v. Stevens* (2001) 26 Cal.4th 42). However, the authority of the Labor Commissioner in this regard cannot exceed the grant of authority provided by Chapter 4. Administrative agencies have only those powers that have been conferred on them, expressly or by implication, by constitution or statute (*City and County of San Francisco v. Padilla* (1972) 23 Cal.App.3d 388, 400). An administrative agency, therefore, must act within the powers conferred upon it by law and may not validly act in excess of those powers (*Ibid.*). Therefore, the Labor Commissioner, in administering the provisions of Chapter 4, may not exceed the grant of statutory authority provided to it by the Legislature.

Section 1700.30 authorizes the Labor Commissioner to consent to the sale, transfer, or gift of an interest by a talent agency, as follows:

“1700.30. No talent agency shall sell, transfer, or give away to any person other than a director, officer, manager, employee, or shareholder of the talent agency any interest in or the right to participate in the profits of the talent agency without the written consent of the Labor Commissioner.” (Emphasis added.)

The primary task of statutory construction is to ascertain the intent of the Legislature so as to effectuate the purpose of the law (*People v. Snook* (1997) 13 Cal.4th 1210, 1215). Statutes must be construed so as to give a reasonable and commonsense construction that is consistent with the apparent purpose and intention of the lawmakers (*People v. Turner* (1993) 15 Cal.App.4th 1690, 1696).

Section 1700.30 prohibits a talent agency from selling, transferring, or giving any interest in or the right to participate in the profits of the talent agency, other than to a director, officer, manager, employee, or shareholder of the agency, without the written consent of the Labor Commissioner. The provisions of Section 1700.30 are stated in the singular with respect to a talent agency seeking written permission of the Labor Commissioner for an exception to Section 1700.30, and are inconsistent, in our view, with the proposition that the Labor Commissioner is authorized by that section to provide a blanket consent or waiver to talent agencies.

We are further guided by the principle that a statute should be interpreted with reference to the system of law of which it is a part (*People v. Comingmore* (1977) 20 Cal.3d 142, 147). Here, the apparent purpose and intent of Section 1700.30 is evidenced by reference to Chapter 4 as a whole. Chapter 4 is a remedial statute designed to protect those seeking employment (*REO Broadcasting Consultants v. Martin* (1999) 69 Cal.App.4th 489, 494). The “clear object of [Chapter 4] is to prevent improper persons from becoming artists’ managers and to regulate such activity for the protection of the public” (*Buchwald v. Superior Court* (1967) 254 Cal.App.2d 347, 351).

In apparent furtherance of those policy goals, Section 1700.30 requires the written consent of the Labor Commissioner for certain transfers of interest or the right to share in the profits of a talent agency. Whenever such a transfer is contemplated, the Labor

Commissioner is therefore required to be contacted and put on notice, and his or her consent thereto is to be documented in writing. A blanket waiver or consent would omit the case-by-case oversight that, in our view, the Legislature intended that the Labor Commissioner exercise.

Moreover, by way of comparison, although Chapter 4 provides a broad grant of authority to the Labor Commissioner to promulgate administrative regulations (Sec. 1700.29), it provides much more limited authority to grant a license (Sec. 1700.5), to deny a license (Sec. 1700.8), to issue a temporary or provisional license (Sec. 1700.14), to issue a certificate of convenience (Sec. 1700.20a), and to revoke or suspend a license (Secs. 1700.21 and 1700.22). In our opinion, none of these provisions, singly or in conjunction, could be said to confer authority upon the Labor Commissioner to provide blanket waivers of their provisions but rather reflect the necessity of a case-by-case approval or denial.

We conclude, therefore, that the reasonable and commonsense construction, consistent with the apparent purpose and intention of the Legislature to require the Labor Commissioner to consider each request under Section 1700.30 on its own merits, would read the section as providing no authority to the Labor Commissioner to grant a blanket consent to talent agencies. Indeed, in our view, a blanket or industry-wide exception would categorically negate the prohibition of Section 1700.30, and would defeat the apparent intent of the Legislature that the Labor Commissioner exercise administrative discretion in granting his or her consent.

Thus, we conclude that, pursuant to Section 1700.30, the Labor Commissioner may consent in writing to the sale, transfer, or gift of any interest in or the right to participate in the profits of a talent agency on a case-by-case basis, but may not provide a blanket consent that applies generally to talent agencies.

We turn next to Section 1700.39, which provides as follows:

“1700.39. No talent agency shall divide fees with an employer, an agent or other employee of an employer.”

Where statutory language is clear and unambiguous, there is no need for interpretation, for the Legislature is presumed to have meant what it said, and the plain meaning of the language governs (*People v. Coronado* (1995) 12 Cal.4th 145, 151).

Here, the plain language of Section 1700.39 prohibits the dividing of fees with an employer, an agent, or other employee of an employer, and provides no authority to the Labor Commissioner to grant an exception to the prohibition. No other provision of Chapter 4, or any other provision of law, grants this authority.

To summarize, we conclude that the Labor Commissioner does not have the authority to provide a blanket waiver of the requirements of Section 1700.30 of the Labor Code, although the Labor Commissioner, pursuant to that section, may consent in writing, on a case-by-case basis, to the sale, transfer, or gift of any interest in or right to participate in

profits of a talent agency. We further conclude that the Labor Commissioner does not have authority to consent on either a blanket or case-by-case basis to the dividing of fees as prohibited by Section 1700.39.

Very truly yours,

Legislative Counsel

A handwritten signature in black ink, appearing to read "J. Dawson", is written over the printed name.

By
J. Christopher Dawson
Deputy Legislative Counsel

JCD:ktt